IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 28822 of 2007

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANKHLA KHETAJI MAFAJI - Petitioner(s)
Versus
DISTRICT DEVELOPMENT OFFICER & 2 - Respondent(s)

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Appearance :
MR DIPAK R DAVE for Petitioner
MR VC VAGHELA for Petitioner
MR DHAVAL M BAROT for Respondent(s) : 1,
MR JASWANT K SHAH, AGP for Respondent(s) : 2 - 3.

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/11/2007

ORAL JUDGMENT

1. Rule. Mr.Dhaval M.Barot, learned counsel, waives service of Rule on behalf of the respondent No.1. Mr.Jaswant K.Shah, learned Assistant

Government Pleader, waives service of Rule on behalf of the respondents No.2 and 3. Having regard to the facts and circumstances of the case, the matter is heard and disposed of finally today.

2. The instant petition, under Article 226 of the Constitution, has been filed by the petitioner, praying for the following reliefs:

> *(A) A writ of mandamus or any other appropriate writ, order of direction be issued to quash and set aside the communication dated 01.11.2007 of the respondent No.1 with the further direction to the respondent No.1 to treat the application of the petitioner at Annexure-C of the petition as deemed grant and communicate the said fact to all the concerned authorities;*
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> *(B) A writ of mandamus or any other writ, order or direction be issued to direct the respondent No.1 to immediately convene the meeting of District Panchayat so as t consider the application of the petitioner in accordance with provisions of the Act.*
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> *(C) Pending hearing and final disposal of this petition, the respondent may be directed to immediately convene the meeting of District Panchayat so as to take*

decision on the application of the petitioner for grant of N.A.Permission in accordance with provisions of Section 65 of the Act.

(D) Pending the admission, hearing and final disposal of this petition, the respondent No.1 may be directed to immediately convey all the concerned authorities the fact of deemed grant of application of the petitioner with regard to N.A. permission

(E) Any other and further relief or reliefs to deemed fit in the interest of justice be granted.

3. Briefly stated, the case of the petitioner is that he, along with other persons, were the owners of land bearing Survey No.135 P-3/P-2, admeasuring 1 Hectare – 3 Are – 37 Sq.Mtrs. At village Akol, Taluka: Deesa, District: Banaskantha. The petitioner and other persons formed a partnership firm in the name and style of M/s.Murlidhar Cold Storage, Deesa, to build a cold storage plant on the land in question. Since the land in question was agricultural land, the petitioner, along with other concerned persons, made an application under Section 65 of

the Bombay Land Revenue Code ("the Code" for short) to the respondent No.1 on 2.7.2007. A copy of the application dated 2.7.2007 is annexed as Annexure-C to the petition. The said application was received in the office of the respondent No.1 on 7.7.2007. However, when the said application of the petitioner was not processed and decided by the respondent No.1 within a period of three months, the petitioner made a representation dated 30.10.2007, addressed to the respondent No.1, a copy of which is annexed as Annexure-D to the petition. In response to the same, the respondent No.1 has issued a letter dated 1.11.2007, vide which it is informed that due to the Election Code of Conduct being enforced in the State of Gujarat, it is not possible to convene a meeting of the competent committee for granting the requisite permission to the petitioner and that decision will be taken by convening the meeting after the elections are over.

4. I have heard Mr.Dipak R.Dave, learned counsel for the petitioner, Mr.Dhaval M.Barot, learned

counsel for the respondent No.1 and Mr.Jaswant K.Shah, learned Assistant Government Pleader for the respondents No.2 and 3, and have gone through the material on record.

5. The learned counsel for the petitioner submits that in view of the provisions of Section 65 of the Code, the application of the petitioner will be deemed to have been granted after a period of three months from the date of application.

6. There is no dispute regarding the fact that the application was made on 2.7.2007 and was received in the office of the respondent No.1 on 7.7.2007. Even assuming that the period of three months is calculated from 7.7.2007, the period of three months was over on 7.10.2007. Mr.J.K.Shah, learned Assistant Government Pleader, has submitted a copy of the Circular dated 10.10.2007 issued by the Chief Electoral Officer, General Administration Department (Election Division), regarding implementation of the Model Code of Conduct, in view of the ensuing elections to the State Legislative Assembly, for the perusal of this Court. On a

perusal of the same, this Court does not find that there is any bar on the concerned authorities in the exercise of statutory duties as envisaged under Section 65 of the Code. Therefore, the reason given in the letter dated 1.11.2007 by the District Panchayat, Banaskantha, does not seem to be sustainable.

7. Even otherwise, after the expiry of a period of three months from the date of application or, in this case, from the date of receipt of the application, i.e. from 7.7.2007, the deeming provision under Section 65 of the Code will come into operation. The respondent No.1 could have convened the meeting of the executive committee of the District Panchayat before 7.10.2007 but chose not to do so. The petitioner has, in the petition, made out a case that he has to construct a cold storage plant on the land, for which purpose he has applied for a loan, and that he has applied well in advance to the respondent No.1 for taking a decision with regard to the conversion of the land for non-agricultural use. It is also averred that if the

cold storage plant will not be started soon, the petitioner will incur a huge financial loss and will be losing income from the storage of Potatoes, the season for which will commence in the winter months, i.e. from February to March. Since the petitioner had applied on 2.7.2007 and the application had been received by the respondent No.1 on 7.7.2007 and the period of three months has already elapsed, there is no reason why the respondent No.1 should not convene the meeting of the competent committee and decide the application of the petitioner which, in any case, will be deemed to have been granted in view of the provisions of Section 65 of the Code.

8. Mr.Dhaval M.Barot, learned counsel for the respondent No.1, has produced a letter dated 30.10.2007 of the Development Commissioner, Gujarat State, addressed to all District Development Officers of the State. It is taken on the record of the petition. By referring to this communication, it is submitted that the respondent No.1 has been advised that the

competent committees of the District Panchayats should not consider the cases under Sections 65, 66, 67 and 73 of the Code. This letter does not indicate that the advice given is based on the Election Code of Conduct or that there is any prohibition by the competent authority i.e. the Election Commission of India that cases under Sections 65, 66, 67 and 73 of the Code should not be decided by the competent committees of the District Panchayats. Why, and in what context, the said advise has been given and what was the purpose of seeking the advice and by whom, is not at all clear. The learned counsel for the respondent No.1 has not been able to throw any further light in this regard. There is no valid or pressing legal reason not to convene the meeting of the competent committee. For the delay on the part of the respondents in taking an appropriate decision, the petitioner should not be put to loss, for no fault on his part.

9. In the above facts and circumstances, and in the interest of justice, the petition is disposed of with a direction to the respondent No.1 to

convene a meeting of the competent committee of the District Panchayat, Banaskantha, on or before 7.12.2007 and to decide the application dated 2.7.2007 of the petitioner, for grant of non-agricultural permission regarding the land in question, in the said meeting. Rule is made absolute to the above extent. Direct Service is permitted. There shall be no orders as to costs.

(Smt.Abhilasha Kumari, J.)

(sunil)